

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**MICHAEL ADAMS,**

**Plaintiff,**

**v.**

**Civil Action No: 2:10-0423**

**BARRY PARSONS,  
M. G. ROBINSON,  
R. D. SIZEMORE,  
C. R. HOLBERT,  
J. J. LESTER,  
HERB SHELTON, and  
STEPHEN P. BARKER, JR., all individually,**

**Defendants.**

**WITHDRAWAL OF MOTION TO FILE SECOND AMENDED COMPLAINT**

**NOW COMES** the Plaintiff, **MICHAEL ADAMS** (hereinafter, the “PLAINTIFF”), by and through his counsel, Nicholas S. Preservati of Preservati Law Offices, PLLC, and states as follows:

1. The Plaintiff filed his Motion to File Second Amended Complaint on June 24, 2011. The Plaintiff attached a copy of his proposed Second Amended Complaint as an exhibit to said Motion to File Second Amended Complaint.
2. Each of the officer Defendants filed a response to the Plaintiff’s Motion to File Second Amended Complaint. In each response, the officer Defendants argued that the motion should be denied “as futile” because the proposed Second Amended Complaint lacked sufficient factual allegations to sustain the legal theory presented by the Plaintiff.
3. The Plaintiff denies that the underlying factual basis does not support his legal claims against the officer Defendants. However, the Plaintiff does acknowledge that the

proposed Second Amended Complaint can be easily amended to completely eliminate the issues raised by the officer Defendants in their respective Responses.

4. It is the Plaintiff's position that it would be a waste of judicial resources to require this Court to address potential issues that could easily be remedied by Plaintiff simply amending his proposed Second Amended Complaint.

5. Therefore, Plaintiff will in short order file a second Motion to File Second Amended Complaint that will eliminate the alleged deficiencies set forth by each of the officer Defendants. Until that time, this Court should not be required to address the current motion on its merits.

THEREFORE, PLAINTIFF respectfully withdraws his Motion to File Second Amended Complaint.

Plaintiff,  
**MICHAEL ADAMS**

By Counsel,

s/Nicholas S. Preservati  
Nicholas S. Preservati (WV Bar #8050)  
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**Defendants.**

**CERTIFICATE OF SERVICE**

I certify that on July 14, 2011 I filed the foregoing document with the Court using CM/ECF which will send notification of such filing to the following CM/ECF participants.

**Stephen M. Horn**  
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and by U.S. Mail to the last known address of the following defendants:

Stephen P. Barker, Jr.  
P.O. Box 131  
Big Creek, WV 25505

s/ Nicholas S. Preservati

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